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Supreme Court, U.S.
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Docket No: 03-352

IN THE SUPREME COURT OF THE UNITED STATES

William R. Yee,

Petitioner,

v

Shiawassee County Board of Commissioners et al,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI FROM THE MICHIGAN SUPREME COURT

RESPONDENTS, BRYAN AND KELLY JACKSON'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ERIC S. GOLDSTEIN (P45842)
Counsel of Record for Bryan and Kelly Jackson
Bigler, Berry, Johnston, Sztykiel, and Hunt, P.C.
1301 West Long Lake Road, Suite 250
Troy, MI 48098
(248) 641-1800

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QUESTIONS PRESENTED FOR REVIEW

1. Have the Courts of the State of Michigan changed the law so as to deprive Dr. Yee of his property in violation of the 5th and 14th Amendments of the United States Constitution.
   Petitioner says yes.
   Respondents Bryan and Kelly Jackson say no.

2. Has Dr. Yee enjoyed the benefit of due process in connection with this matter?
   Petitioner says no.
   Respondents Bryan and Kelly Jackson say yes.

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STATEMENT REGARDING JURISDICTION

Respondents Bryan and Kelly Jackson do not contest Petitioner's citation to the 5th and 14th Amendments from time to time during proceedings below, however, Respondents dispute that those constitutional provisions and the arguments regarding the Michigan courts changing the law to deny Dr. Yee his rights as a violation of those amendments have ever been raised.

STATEMENT OF THE CASE

Respondents Bryan and Kelly Jackson do not articulate any dissatisfaction with Petitioner's reliance upon the Michigan Court of Appeals' statement of facts as the required "Brief Statement of the Case," as far as it goes. However, Bryan and Kelly Jackson can not comment through this Response as to the balance of Petitioner's "Statement" aside from the Michigan Supreme Court's denial of Leave to Appeal. Respondents Bryan and Kelly Jackson may well have been interested individuals in the separate action to set the lake level commenced by the Shiawassee County Board of Commissioners discussed by Petitioner. However, they were not directly represented by this office in that action, and, as discussed below, were not distinct litigants.

ARGUMENT

I. THERE HAVE BEEN NO CHANGES IN MICHIGAN LAW THAT AFFECT PETITIONER'S PROPERTY RIGHTS

The thrust of Petitioner's complaints revolve around his frustrated effort to initiate an action to set the lake level on the strength of his independent petition. As was found by the Michigan Court of Appeals, Michigan law does not afford private individuals a cause of action to initiate such a proceeding. Indeed, Michigan Statutory Law, pursuant to the Inland Lake Level Act ("ILLA") MCL 324.30701 et seq; MSA 13A.30701 et seq, sets forth specific procedures for the setting of such lake levels.

Those procedures require the County Commission to charge the County Prosecutor to initiate the action. Private individuals have the right to petition such conduct and indeed, should sufficient numbers so petition, compel the commencement of such an action. MCL 324.30702(i); MSA 13A.30702(i), and MCL 324.30704(i); MSA 13A.30704(i)

Petitioner does not dispute the Michigan Court of Appeals' analysis reflecting modifications of the pertinent lake level statutes over time. In particular, Petitioner does not dispute the Court's conclusion that the modifications lacked any substantive change as they would apply to this matter. Petitioner instead points to the case of Arnold v Ellis, 5 Mich App 101; 145 NW2d, 822 (1966) to support the proposition that a private cause of action may be brought by an individual such as himself under the ILLA and accordingly, the Genesee County Circuit Court committed error in dismissing his complaint for lack of jurisdiction.

The Michigan Court of Appeals' affirmation of the Circuit Court dismissal acknowledged the Arnold v Ellis case, noting that Arnold did not foreclose the possibility of a private cause of

action. The Yee Court of Appeals did foreclose a private cause of action for the reasons set forth therein speaking to public policy, public interests, and the overall purpose and function of the statute. The Yee panel further found the Arnold panel's decision lacking and unpersuasive, as it did not incorporate that type of comprehensive overview and analysis at the time it elected to not foreclose a private cause of action. This is an alleged change of law according to Dr. Yee.

The thrust of Dr. Yee's argument within the Petition relies on the administrative order of the Michigan Supreme Court of November 1990 for purported teeth. That Order gave rise to a new court rule governing the binding nature of opinions published by Michigan's Court of Appeals. See MCR 7.215 (I)(1) which provides:

> "A panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990, that has not been reversed or modified by the Supreme Court, or by a special Court of Appeals as provided in this rule. "

The Yee Court of Appeals decision made reference to this Court Rule in the context of its analysis addressing the Arnold argument. Petitioner's argument along these lines is premised upon the notion that this 1990 Court Rule relieved subsequent Court of Appeals panels from having to follow the precedent set by decisions prior to November 1, 1990. However, such has never been the case.

This portion of MCR 7.215 in fact, changed the extent of stare decisis in Michigan. Prior to its implementation, published

decisions by the Court of Appeals were binding only upon the trial courts and **not subsequent panels of the Court of Appeals.** Thus, had MCR 7.215 (I)(1) not been implemented by the Michigan Supreme Court, the Arnold v Ellis case would not be in any way, shape, or form, binding upon the Yee Court of Appeals panel anyway.

Petitioner's argument is premised upon the assumption that prior to the implementation of MCR 7.215(I)(1) the Arnold v Ellis decision would have been binding in subsequent panels of the Court of Appeals. As such was not the case, and that was not changed by virtue of the codification of MCR 7.215, Petitioner's arguments along these lines are wholly without merit.

II. PETITIONER'S CLAIMS OF DENIAL OF DUE PROCESS ARE MOOT AS HE HAS BEEN AFFORDED A FULL OPPORTUNITY TO BE HEARD

To the extent Petitioner's complaints are that he has been deprived of property without due process, i.e. an opportunity to be heard, he has not set forth an actual case or controversy to this Court, as such are contemplated under Article III of the Constitution. See Hans v Louisiana, 10 S.Ct. 504; 134 U.S. 9; 33 L.Ed. 849 (1890).

The 5th and 14th Amendments taken together are generally deemed to protect private citizens from encroachments or deprivations based on state conduct. It does not apply to private citizens such as Respondents Bryan and Kelly Jackson. In any event, as set forth in the actual Petition to this Court, the argument seems to be that the State of Michigan changed its law to deprive him of property without due process. It is well-settled law that in order to make a prima facie claim of denial of due process, Plaintiff must establish two (2) critical elements:

1. A plaintiff's liberty or property interests have been invaded by government without an opportunity to challenge the invasion;

2. The justification for the invasion is at least plausibly disputable.

See for example Rainbow Valley Citris Corporation v Federal Crop Insurance Corporation, 506 F.2d, 467 (C.A. AZ, 1974).

Petitioner has failed to establish these elements at any point in the proceedings.

The notion that his property interests have been invaded by the government is premised upon the faulty conclusion that the law was changed simply to deprive him of his rights. That argument has been addressed above and is fatal to the due process claim.

Additionally, he has had opportunity to challenge the so-called "invasion" by arguing at every level that the Arnold v Ellis case controls. Indeed, the very Petition advanced to this Court contains citations to and quotes from the proceedings wherein Petitioner was allowed to advance arguments regarding the setting of the lake level.

Outside of dissatisfaction with the outcome of that hearing, combined with dissatisfaction with the appellate review process in the Michigan courts, Petitioner has not set forth any unusual aspect to the proceedings which serve to deprive him of due process. Accordingly, it is submitted that Petitioner has had the benefit of due process.

The source of his dissatisfaction from a procedural standpoint is merely that the hearing was commenced by the

actions of the County Prosecutor at the direction of the County Board of Commissioners as opposed to a complaint initiated by himself. As he was given a full opportunity to present proofs in the County action, this is a procedural distinction without any significance and did not result in any deprivation of due process. It has simply been advanced as a vehicle for Petitioner to bring this matter to this Court's attention.

III. PETITIONER'S NON-COMPLIANCE WITH RULE 10

Respondents Bryan and Kelly Jackson assert to this Court that Petitioner has presented no compelling reason for the writ of Certiorari to be granted. As set forth above, the argument that the courts in the State of Michigan have somehow modified the law to deprive him of his property are not only inconsistent with the evolution of Michigan law, but were never raised below and thus not preserved for appeal. Secondly, the complaint that Dr. Yee has been deprived property without due process under the 5th and 14th Amendments are simply not supported by the record or the law.

CONCLUSION AND RELIEF REQUESTED

Respondents Bryan and Kelly Jackson request that Petitioner's efforts to seek a Writ of Certiorari from this Court be denied.

Respectfully submitted,

Law Offices of
BIGLER, BERRY, JOHNSTON
SZTYKIEL & HUNT, P.C.

BY: _____
ERIC S. GOLDSTEIN (P45842)
Attorney for Defs Jackson
1301 W. Long Lake Rd., Ste 250
Troy, MI 48098
248-641-1800

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